

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

GENERAL LAND OFFICE
OF THE STATE OF TEXAS,

Plaintiff,

v.

UNITED STATES FISH AND WILDLIFE
SERVICE, *et al.*,

Defendants.

No. 1:17-cv-00538-SS

**UNOPPOSED MOTION FOR LEAVE TO FILE AN *AMICUS CURIAE* BRIEF IN
OPPOSITION TO PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT AND IN
SUPPORT OF FEDERAL DEFENDANTS’ CROSS-MOTION FOR SUMMARY
JUDGMENT AND OPPOSITION TO PLAINTIFF’S MOTION FOR SUMMARY
JUDGMENT BY TRAVIS AUDUBON SOCIETY, TEXAS ORNTHOLOGICAL
SOCIETY, CENTER FOR BIOLOGICAL DIVERSITY, AND DEFENDERS OF
WILDLIFE**

TO THE HONORABLE U.S. DISTRICT JUDGE SAM SPARKS:

Travis Audubon Society, Texas Ornithological Society, Center for Biological Diversity, and Defenders of Wildlife (collectively “Travis Audubon”) respectfully ask leave to file an *amicus curiae* brief in order to protect their interest in the golden-cheeked warbler (“Warbler”) and to defend the U.S. Fish & Wildlife Service’s decision to deny a petition to remove the Warbler from the federal list of Endangered and Threatened Wildlife.

Neither Plaintiff nor Federal Defendants oppose Travis Audubon’s motion.

I. Interest of *Amici Curiae*

Travis Audubon appears as *amici curiae* in order to protect their interest in the Warbler and to defend the U.S. Fish & Wildlife Service's decision to reject a petition to remove the Warbler from the federal list of Endangered and Threatened Wildlife. Travis Audubon's *amicus curiae* brief addresses the serious threats that climate change and catastrophic wildfire pose to the Warbler and its habitat. In the interest of judicial economy, the facts and arguments set forth by Federal Defendants in their Cross-Motion for Summary Judgment and Opposition to Plaintiff's Motion for Summary Judgment, ECF 67, are not repeated except when necessary.

Travis Audubon previously moved to intervene in this action. ECF 6. On November 30, 2017, this Court denied Travis Audubon's Motion to Intervene, but stated that Travis Audubon may file an *amicus curiae* brief of no more than twenty-pages if necessary to protect its interest in the Warbler. ECF 47 at 8. On April 6, 2016, this Court ordered *amici curiae* to file such an *amicus curiae* brief, not to exceed 20 pages, no later than July 6, 2018.

II. Relief Sought

Although this Court has previously stated that Travis Audubon may file an *amicus* brief, out of an abundance of caution, Travis Audubon seeks leave of this Court to file an *amicus curiae* brief, attached hereto as Exhibit A, in opposition to Plaintiff's Motion for Summary Judgment, ECF 64, and in support of Federal Defendants' Cross-Motion for Summary Judgment and Opposition to Plaintiff's Motion for Summary Judgment, ECF 67. A proposed order granting such relief is attached hereto as Exhibit B.

July 6, 2018

Respectfully submitted,

/s/ Ryan Adair Shannon

Ryan Adair Shannon, *pro hac vice*

Center for Biological Diversity
P.O. Box 11374
Portland, OR 97211
503-283-5474 ext. 407
rshannon@biologicaldiversity.org

*Attorney for Amicus Curiae Center for Biological
Diversity, Travis Audubon, and Texas
Ornithological Society*

Jason C. Rylander, *pro hac vice*
Defenders of Wildlife
1130 17th Street, NW
Washington, DC 20036
202-772-3245
jrylander@defenders.org

David Frederick
(State Bar No. 07412300)
FREDERICK, PERALES, ALLMON &
ROCKWELL, P.C.
1206 San Antonio
Austin, Texas 78701
Telephone: (512) 469-6000
Facsimile: (512) 482-9346

CERTIFICATE OF CONFERENCE

I certify that on July 6, 2018, I conferred with Ms. Devon Lea Flanagan, for Defendants, and Mr. Ted Hazdi-Antich, for Plaintiff, and they stated that they do not oppose Travis Audubon's Unopposed Motion for Leave to File an *amicus curiae* brief in Opposition to Plaintiff's Motion for Summary Judgment and in Support of Federal Defendants' Cross-Motion for Summary Judgment and Opposition to Plaintiff's Motion for Summary Judgment.

/s/ Ryan Adair Shannon

Ryan Adair Shannon (*Pro Hac Vice*)

CENTER FOR BIOLOGICAL DIVERSITY

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of July, 2018, a true and correct copy of the foregoing has been electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all attorney(s) of record as follows:

Theodore Hadzi-Antich
Texas Public Policy Foundation
901 Congress Avenue
Austin, TX 78701
512-472-2700
Fax: 512-472-2728
Email: tha@texaspolicy.com

Robert E Henneke
Texas Public Policy Foundation
901 Congress Avenue
Austin, TX 78701
512-472-2700
Fax: 512-472-2728
Email: rhenneke@texaspolicy.com

Ryan Daniel Walters
Texas Public Policy Foundation
901 Congress Avenue
Austin, TX 78701
512-472-2700
Fax: 512-472-2728
Email: rwalters@texaspolicy.com

Charles Kneeland Cooper, IV
U.S. Attorney's Office
816 Congress Avenue
10th Floor
Austin, TX 78701
512-370-1262
Fax: 512-916-5854
Email: charlie.cooper@usdoj.gov

Devon L. Flanagan
U.S. Department of Justice
Environment & Natural Resources
601 D Street NW
Washington, DC 20004
202-305-0201
Email: devon.flanagan@usdoj.gov

/s/ Ryan Adair Shannon

Ryan Adair Shannon (*Pro Hac Vice*)
CENTER FOR BIOLOGICAL DIVERSITY